



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

JUL - 6 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Phillips 66 Company
Attn: Mr. Doug Lafayette
1400 Park Ave
Linden, New Jersey 07036

7015 0640 0001 0675 5449

Re: Notice of Violation: EPA Docket No. CAA-02-2016-1303

Dear Mr. Lafayette:

Pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, Region 2 of the U.S. Environmental Protection Agency issues the enclosed Notice of Violation ("NOV") to Phillips 66 Company ("Phillips"). The NOV identifies Phillips' violations of 40 C.F.R. Part 60, Subpart Kb; 40 C.F.R. Part 63, Subpart CC; CAA Title V; and the New Jersey Administrative Code § 7:27 16.2(l)(1)(v), the last of which is part of the federally enforceable CAA state implementation plan ("SIP") for the State of New Jersey. The violations involve failure to maintain vacuum breakers, otherwise known as automatic bleeder vents, in a closed position. This results in excess emission of volatile organic compounds.

If Phillips would like to schedule a face-to-face conference to discuss the NOV, please contact, or have your legal counsel contact, Sara Froikin, Assistant Regional Counsel, at Froikin.sara@epa.gov, within ten days of your receipt of this letter and the enclosed NOV.

Sincerely,

Dore LaPosta

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
Enclosure

cc: Vanessa Day
Northern Region Field Office
New Jersey Department of Environmental Protection

Richelle Wormley, Director
Air and Hazardous Materials Enforcement
New Jersey Department of Environmental Protection

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

PHILLIPS 66 COMPANY

Respondent

In a proceeding under
Section 113 of the Clean Air Act

NOTICE OF VIOLATION

CAA-02-2016-1303

Summary

The Director of the Division of Enforcement and Compliance Assistance ("DECA") for the United States Environmental Protection Agency ("EPA") Region 2 issues this Notice of Violation ("NOV") to Phillips 66 Company ("Phillips 66" or "Respondent"), pursuant to Section 113 of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7413. This NOV identifies violations of 40 CFR Part 60, Subpart Kb; 40 CFR Part 63, Subpart CC; CAA Title V; and the New Jersey Administrative Code 7:27 16.2(l)(1)(v), the last of which is part of the federally enforceable CAA state implementation plan ("SIP") for the State of New Jersey. The violations involve failure to maintain vacuum breakers, otherwise known as automatic bleeder vents, in a closed position. This results in excess emission of volatile organic compounds.

Statutory and Regulatory Background

1. Whenever "person" is used in the Act, the term includes an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

NSPS Statutory Requirements: CAA Section 111

2. Section 111(b)(1)(A) of the CAA requires EPA to publish a list of categories of stationary sources of air pollution which, in the judgment of the Administrator, cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare.

3. Section 111(b)(1)(B) requires EPA to promulgate regulations establishing federal standards of performance for "new sources" within each category or subcategory listed pursuant to Section 111(b)(1)(A). Such standards of performance are commonly known as "new source performance standards," or NSPS.

4. The term "stationary source" is defined by Section 111(a) of the CAA to mean any building, structure, facility or installation, which emits or may emit any air pollutant.

5. Section 111(a)(2) of the CAA defines a "new source" as "any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source."

6. Section 111(e) of the CAA provides that after the effective date of any standard promulgated under Section 111, it shall be unlawful for any owner or operator of a new source to operate that source in violation of the standard.

NSPS Regulatory Requirements: General Provisions and Subpart Kb

7. Pursuant to Sections 111 and 114 of the CAA, EPA promulgated 40 CFR Part 60, Subpart Kb.

8. 40 CFR § 60.1 provides that, with exceptions provided in 40 CFR Part 60, Subparts B and C, the NSPS General Provisions apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication of any Part 60 standards (or, if earlier, the date of the publication of any proposed standard) applicable to the facility.

9. 40 CFR § 60.2 defines “affected facility,” with reference to a stationary source, as any apparatus to which a standard is applicable.

10. 40 CFR § 60.2 defines “owner or operator” as any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is part.

11. 40 CFR § 60.2 defines “stationary source” as any building, structure, facility, or installation which emits or may emit any air pollutant.

12. 40 CFR § 60.11(d) provides that at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. It further provides: “Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

13. NSPS Subpart Kb (Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984) sets forth standards applicable to owners and operators of a “storage vessel with a capacity greater than or equal to 75 cubic meters (m^3) that is used to store volatile organic liquids (VOL) for which construction, reconstruction, or modification is commenced after July 23, 1984.”

14. 40 CFR § 60.112b(a) states that “[t]he owner or operator of each storage vessel either with a design capacity greater than or equal to 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kilopascal (kPa) but less than 76.6 kPa or with a design capacity greater than or equal to 75 m^3 but less than 151 m^3 containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa but less than 76.6 kPa, shall equip each storage vessel with one of the following: (1) A fixed roof in combination with an internal floating roof . . .”; “(2) An external floating roof . . .”; or “(3) A closed vent system and control device meeting [certain] specifications.”

15. 40 CFR § 60.112b(a)(2) states that “[a]n external floating roof means a pontoon-type or double-deck type cover that rests on the liquid surface in a vessel with no fixed roof.”

16. 40 CFR § 60.112b(a)(2)(ii) states that “[e]xcept for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each

opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof legs supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening."

CAA Section 112, Hazardous Air Pollutants: Statutory Requirements

17. Section 112 of the Act requires the EPA Administrator to: (i) publish a list of hazardous air pollutants ("HAPs"), (ii) publish a list of categories and subcategories of major and area sources of those HAPs, and (iii) promulgate regulations establishing emission standards for each such category and subcategory.

18. Emissions standards promulgated pursuant to Section 112 are commonly known as National Emissions Standards for Hazardous Air Pollutants, or NESHAPs. NESHAPs promulgated under the CAA as it existed prior to the 1990 CAA amendments are set forth in 40 CFR Part 61. NESHAPs promulgated under the CAA as amended in 1990 are set forth in 40 CFR Part 63. Part 63 NESHAPs are sometimes known as MACT standards, because Section 112(d) of the CAA, as amended in 1990, directs EPA to promulgate emissions standards based on the maximum achievable control technology ("MACT").

19. Section 112(a) of the Act contains definitions relevant to Section 112. More specifically:

- a. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants.
- b. Section 112(a)(2) of the Act defines "area source" as any stationary source of hazardous air pollutants that is not a major source.
- c. Section 112(a)(3) of the Act defines "stationary source" as any building, structure, facility or installation which emits or may emit any air pollutant.
- d. Section 112(a)(9) defines "owner or operator" as any person who owns, leases, operates, controls or supervises a stationary source.

20. Section 112(i)(3)(A) prohibits the operation of a source in violation of any emissions standard, limitation or regulation issued pursuant to Section 112, and directs the Administrator to set a compliance deadline for existing sources that is no more than 3 years after the effective date of the standard.

40 CFR Part 63 Subpart CC: Regulatory Requirements

21. MACT Subpart CC (National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries) sets forth standards applicable to owners and operators of "petroleum refining process units and certain related emissions points that are located at a plant site and that are both (1) "located at a plant site that is a major source as defined in section 112(a) of the Clean Air Act" and (2) "[e]mit or have equipment containing or contacting one or more of the hazardous air pollutants listed in table 1 of this subpart." 40 CFR § 63.640(a). The related emissions points include both "[a]ll storage vessels associated with petroleum refining process units" and "[a]ll storage vessels and equipment leaks associated with a bulk gasoline terminal or pipeline breakout station classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a refinery meeting the criteria in paragraph (a) of this section." 40 CFR §§ 63.640(c)(2) & (7).

22. 40 CFR 63.2 (which Table 6 of MACT Subpart CC says applies under the Subpart) defines a "major source" as " any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence."

23. MACT Subpart CC states that a "Group 1 storage vessel means a storage vessel at an existing source that has a design capacity greater than or equal to 177 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 10.4 kilopascals and stored-liquid annual average true vapor pressure greater than or equal to 8.3 kilopascals and annual average HAP liquid concentration greater than 4 percent by weight total organic HAP; a storage vessel at a new source that has a design storage capacity greater than or equal to 151 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 3.4 kilopascals and annual average HAP liquid concentration greater than 2 percent by weight total organic HAP; or a storage vessel at a new source that has a design storage capacity greater than or equal to 76 cubic meters and less than 151 cubic meters and stored-liquid maximum true vapor pressure greater than or equal to 77 kilopascals and annual average HAP liquid

concentration greater than 2 percent by weight total organic HAP.” 40 CFR § 63.641.

24. MACT Subpart CC states that a “Group 2 storage vessel means a storage vessel that does not meet the definition of a Group 1 storage vessel.” 40 CFR § 63.641.

25. 40 CFR § 63.640(n) covers overlap of subpart CC with other regulations for storage vessels. Under this provision, a Group 2 storage vessel that is part of an existing source and is also subject to 40 CFR part 60, subpart Kb, is required to comply only with the requirements of 40 CFR part 60, subpart Kb, with certain exceptions not relevant here. 40 CFR § 63.640(n)(1) & (8).

26. Sources subject to 40 CFR Part 63, Subpart CC are also subject to certain Part 63 General Provisions, including the provisions of 40 CFR § 63.6(e)(1) stating that “[a]t all times, including periods of startup, shutdown, and malfunction, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.” 40 CFR Part 63, Subpart CC, Table 6.

State of New Jersey SIP Requirements

27. Section 109 of the CAA directs the EPA Administrator to promulgate regulations establishing national ambient air quality standards (“NAAQS”) for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act.

28. Section 110(a)(1) of the CAA requires each state to adopt and submit to EPA for approval, a plan that provides for the implementation, maintenance, and enforcement of each of the NAAQS. Such plans, once approved by EPA, are known as State Implementation Plans, or SIPs.

29. At all times relevant to this NOV, the federally approved SIP for the State of New Jersey has included Title 7, Chapter 27, Subchapter 16 of the New Jersey Administrative Code (Effective April 20, 2009) (“NJ VOC Control Regulation”). *See* 75 Fed. Reg. 45483 (Aug. 3, 2010).

30. At all times relevant to this NOV, the NJ VOC Control Regulation has defined “facility” as “the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.”

31. At all times relevant to this NOV, the NJ VOC Control Regulation has defined “major VOC facility” as “any facility which has the potential to emit 25 or more tons of VOCs per year.” N.J. Admin. Code § 7:27-16.1 (2010).

32. At all times relevant to this NOV, the NJ VOC Control Regulation has defined “person” as “any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any State, and any agencies or instrumentalities thereof.” N.J. Admin. Code § 7:27-16.1 (2010).

33. Under New Jersey Administrative Code 7:27 16.1, a “storage tank” means any tank, reservoir, or vessel which is a container for liquids or gases, wherein:

- a. No manufacturing process, or part thereof, other than filling or emptying takes place; and
- b. The only treatment carried out is that necessary to prevent change from occurring in the physical condition or chemical properties of the liquids or gases deposited into the container. Such treatment may include recirculating, agitating, maintaining the temperature of the stored liquids or gases, or replacing air in the vapor space above the stored liquids or gases with an inert gas in order to inhibit the occurrence of chemical reaction.

34. Under New Jersey Administrative Code 7:27 16.1, a “vacuum breaker” means “a device used to equalize the pressure of the vapor space across the floating roof deck as the deck is either being landed on or floated off its legs.”

35. Under New Jersey Administrative Code 7:27 16.1, a “volatile organic compound” or “VOC” means “a volatile organic compound as that term is defined by the EPA at 40 CFR § 51.100(s), as supplemented or amended, which is incorporated by reference herein.” 40 CFR § 51.100(s) defines “volatile organic compounds” or “VOC” as “any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions,” with certain exceptions not relevant here.

36. New Jersey Administrative Code 7:27 16.2 sets forth standards that “apply to any stationary storage tank that stores only VOC, or that stores VOC and non-VOC,” with certain exceptions not relevant here.

37. Table 2A in New Jersey Administrative Code 7:27 16.2 specifies that tanks with vapor pressures and capacities in certain ranges are “Range III” tanks that must have floating roofs.

38. New Jersey Administrative Code 7:27 16.2(l) states that “No person shall cause, suffer, allow, or permit the storage of any VOC in any stationary storage tank unless the provisions of this subsection are met.”

39. New Jersey Administrative Code 7:27 16.2(l)(1)(v) states that the owner or operator of an external floating roof tank in Range III shall “[g]asket each vacuum breaker. Vacuum breakers shall be closed at all times, with no visible gaps, when the roof is floating; and shall be set to open only when the roof is being floated off or is being landed on the roof leg supports.”

40. New Jersey Administrative Code 7:27 16.2(l)(2) states that in lieu of complying with the requirements of no visible gap at (l)(1)(v), the owner or operator of an external floating roof tank in Range III may, no later than September 16, 2009 if the tank was in existence on May 18, 2009, or on initial fill if the tank is constructed on or after May 19, 2009, maintain all roof openings in a leak-free condition at all times except during certain preventive maintenance, repair, or inspection periods.

41. New Jersey Administrative Code 7:27 16.2(r)(10) states that the owner or operator of any VOC stationary storage tank in Range III shall repair or replace any piping, valve, vent, seal, gasket, or cover of a roof opening that is defective, has a visible gap or is not leak-free, or does not meet any applicable requirement of the relevant section.

42. The provisions cited in Paragraphs 29 through 41 are approved into the New Jersey SIP and are federally enforceable. 75 Fed. Reg. 45483 (Aug. 3, 2010).

Clean Air Act Title V Operating Permit and NS Operating Permit

43. Section 502(a) of the Act provides that after the effective date of any permit program approved or promulgated pursuant to the title V of the Act, it is unlawful for any person to violate any requirement of a permit issued under title V of the Act, or to operate a title V affected source except in compliance with a permit issued by a permitting authority under title V of the Act.

44. Under Section 502(b) of the Act, EPA promulgated 40 CFR Part 70, “State Operating Permit Programs,” which provides for the establishment of comprehensive state air quality permitting programs consistent with the requirements of Title V of the Act. EPA’s Part 70 regulations define the minimum elements required by the Act for state operating permit programs, among other things. *See* 40 CFR § 70.1.

45. Section 502(d) of the Act requires each state to develop, and submit to EPA for approval, a permit program meeting the requirements of Title V of the Act, including the requirements of the Part 70 State Operating Permit Programs regulations.

46. Under Section 502(e) of the Act, EPA maintains its authority to enforce permits issued by a state.

47. Pursuant to Section 502(d)(1) of the Act, New Jersey developed and submitted Title 7, Chapter 27, Subchapter 22 of the New Jersey Administrative Code (the “New Jersey Operating Permit Regulation”) to EPA, to meet the requirements of title V of the Act, and 40 CFR Part 70, which was promulgated pursuant to Section 502(b) of the Act.

48. The NJ Operating Permit Regulation applies to a facility with the potential to emit at least 25 tons per year of VOCs. *See* N.J. Admin. Code § 7:27-22.2.

49. The NJ Operating Permit Regulation defines “operating permit” “as the permit described in Title V of the federal Clean Air Act, 42 U.S.C. § 7661 *et seq.*...” N.J. Admin. Code § 7:27-22.1.

50. The owner or operator of a facility subject to the NJ Operating Permit Regulation shall obtain and maintain an “operating permit” for the facility. *See* N.J. Admin. Code § 7:27-22.3(a).

51. Title V of the Clean Air Act, CAA §§ 501-507, and 40 CFR Part 70 discuss the “operating permit” referenced in the NJ Operating Permit Regulation. *See* N.J. Admin. Code § 7:27-22.1 (“Operating permit” “means the permit described in Title V of the federal Clean Air Act, 42 U.S.C. § 7661 *et seq.*...”).

52. On August 14, 2013, NJDEP issued the initial Title V Permit to Phillips 66 Company (Permit Activity Number BOP110004, Program Interest Number 41805) (“the Title V permit”). The Permit was last modified on August 19, 2014, and it expires on August 13, 2018.

53. Page 13 of the Title V permit states that the Facility must comply with the requirements of 40 CFR § 61.12(c) that “[t]he owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.”

54. Pages 699-705 of the Title V permit contain a table of facility-specific requirements for Tank #549. The operating scenario describes this tank as NSPS Kb and MACT CC Group 2.

55. Reference #1 on page 699 of the Title V permit states that “[t]he tank shall comply only with the requirements of 40 CFR part 60, subpart Kb, except as provided in paragraph 40 CFR 63.640(n)(8)” and cites 40 CFR § 63.640(n)(1) for this requirement.

56. Reference #3 on page 700 of the Title V permit lists the requirements of 40 CFR § 60.112b(a)(2)(ii) as an applicable requirement, which includes the requirement that “[a]utomatic

bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.”

57. The Emission Unit/Batch Process Inventory section of the Title V permit contains a table listing all of the Facility External Floating Roof Tanks. This table contains a universal operating scenario (UOS) description for each tank. The UOS description describes Tanks #538 and #541 as MACT CC, Group 2, and describes Tank #549 as NSPS Kb and MACT CC, Group 2.

EPA’s Authority to Issue NOV’s and Enforce SIPs

58. Section 113(a)(1) of the CAA provides, in pertinent part, that whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated or is in violation of any requirement or prohibition of a SIP, the Administrator shall notify the person and the state in which the SIP applies of such finding. Section 113(a)(1) further provides that after 30 days of providing such notice, the EPA Administrator may take various actions to address the violation(s).

59. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the authority to make findings of violation and to issue notices of violation under Section 113 of the CAA has been delegated to the Director of DECA by the EPA Administrator through the EPA Region 2 Regional Administrator.

Findings of Fact

60. The following findings of fact are based on an investigation conducted by EPA Region 2 pursuant to Section 114 of the CAA, 42 U.S.C. § 7414. The investigation included, among other actions, inspecting Respondent’s Linden, NJ facility and reviewing records Respondent provided as a result of EPA’s inspection.

61. Respondent owns and operates the refinery and petroleum storage facility located at 1400 Park Ave in Linden, New Jersey (the “Facility”).

62. EPA Region 2 compliance inspectors inspected petroleum storage tanks at the Facility on April 30 and May 1, 2015. This inspection included visual observation of storage tanks using a FLIR infrared camera.

63. Tank #538 is an external floating roof tank that was constructed in 1955. It has a capacity of 6,552,000 gallons, or 24,804 cubic meters. Its vapor pressure in pounds per square inch

MACT Subpart CC:

71. Respondent is a "person" within the meaning of Section 302(e) of the Act.
72. The Facility is a "major source" under Section 112(a)(1) of the Act and under 40 CFR § 63.2.
73. Respondent is an "owner or operator" of the Facility within the meaning of Section 112(a)(9) of the Act.
74. Respondent's Facility is subject to the Petroleum Refineries MACT, 40 CFR Part 63, Subpart CC at Tanks #538, 541, and 549.
75. Tanks #538, 541, and 549 are subject to 40 CFR Part 63, Subpart CC as Group 2 storage vessels.
76. Respondent failed to maintain automatic bleeder vents on external floating roof tank #549 as closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports as required by 40 CFR § 63.640(n).
77. The Facility failed to operate and maintain Tanks #538, 541, and 549 in a manner consistent with safety and good air pollution control practices for minimizing emissions as required by 40 CFR § 63.6(e)(1).

NSPS Subpart Kb:

78. Respondent is a "person" within the meaning of Section 302(e) of the Act.
79. Tank #549 is an affected facility that is a "storage vessel with a capacity greater than or equal to 75 cubic meters (m³) that is used to store volatile organic liquids (VOL) for which construction, reconstruction, or modification is commenced after July 23, 1984" subject to 40 CFR Part 60 Subpart Kb.
80. Tank #549 is an external floating roof tank under 40 CFR § 60.112b(a)(2).
81. Respondent failed to maintain automatic bleeder vents on Tank #549 as closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports as required by 40 CFR § 60.112b(a)(2)(ii).
82. The Respondent failed to, to the extent practicable, maintain and operate Tank #549 in a manner consistent with good air pollution control practice for minimizing emissions as required by 40 CFR § 60.11(c).

New Jersey SIP:

absolute (PSIA) at 70 degrees Fahrenheit is greater than 0.06 PSIA. It is located in the Upper Tremley tank field at the Facility. The tank was last emptied and degassed on August 9, 2005.

64. There are vents located on the roof of an external floating roof tank that are called both vacuum breaker vents and automatic bleeder vents; both names identify the same vents.

65. EPA Region 2 compliance inspectors inspected Tank #538 during the on-site inspection. On the date of inspection, it was being used to store crude oil. When the compliance inspectors observed the tank using a FLIR infrared camera, they observed a plume of emissions coming from three vacuum breaker vents, indicating that the vacuum breaker vents were not closed.

66. Tank #541 is an external floating roof tank that was constructed in 1954. It has a capacity of 6,552,000 gallons, or 24,804 cubic meters. Its vapor pressure in PSIA at 70 degrees Fahrenheit is greater than 0.06 PSIA. It is located in the Upper Tremley tank field at the Facility. The tank was last emptied and degassed on March 3, 1999.

67. EPA Region 2 compliance inspectors inspected Tank #541 during the on-site inspection. On the date of inspection, it was being used to store crude oil. When the compliance inspectors observed the tank using a FLIR infrared camera, they observed a plume of emissions coming from one vacuum breaker vent, indicating that the vacuum breaker vent was not closed.

68. Tank #549 is an external floating roof tank that was constructed on 1994. It has a capacity of 10,878,000 gallons, or 41,181 cubic meters. Its vapor pressure in PSIA at 70 degrees Fahrenheit is greater than 0.03 PSIA. It is located in the Upper Tremley tank field at the Facility. The tank was last emptied and degassed on July 16, 2015.

69. EPA Region 2 compliance inspectors inspected Tank #549 during the on-site inspection. On the date of inspection, it was being used to store crude oil. When the compliance inspectors observed the tank using a FLIR infrared camera, they observed a plume of emissions coming from one vacuum breaker vent, indicating that the vacuum breaker vent was not closed.

70. Other storage tanks with similar contents observed by the EPA Region 2 compliance inspectors did not have vacuum breaker vent emissions that were visible using the FLIR infrared camera.

Conclusions of Law

Based on the Finding of Fact set forth above, EPA reaches the following conclusions of law:

83. Respondent is a "person" under New Jersey Administrative Code § 7:27 16.1.

84. Tanks #538, 541, and 549 at the Facility are stationary storage tanks that store only VOC, or that store VOC and non-VOC, subject to the SIP provisions found at New Jersey Administrative Code § 7:27 16.2.

85. Tanks #538, 541, and 549 are Range III external floating roof stationary storage tanks under Table 2A of New Jersey Administrative Code § 7:27 16.2.

86. Respondent is an owner or operator of the external floating roof tanks #538, 541, and 549.

87. Respondent failed to keep vacuum breakers on Tanks #538, 541, and 549 closed at all times, with no visible gaps, when the roof is floating, as required by New Jersey Administrative Code § 7:27 16.2(l)(1)(v).

Clean Air Act Title V Operating Permit and NJ Operating Permit:

88. The Facility is a source subject to Title V of the Clean Air Act.

89. Respondent failed to keep automatic bleeder vents/vacuum breakers on Tank #549 closed at all times, in violation of its Title V permit.

90. The Respondent failed to maintain and operate Tanks #538, 541, and 549 in a manner consistent with good air pollution control practice for minimizing emissions, as required by 40 CFR § 61.12(c) and its Title V permit.

Enforcement

Section 113(a)(1) of the CAA authorizes EPA to take any of the following actions in response to a respondent's violation(s) of a SIP, after the expiration of 30 days following the issuance of a notice of violation:

- Issue an order requiring compliance with the requirements or prohibitions of the SIP;
- Issue an administrative penalty order in accordance with CAA Section 113(d); or
- bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

Section 113(a)(3) of the CAA authorizes EPA to take similar actions in response to a respondent's non-SIP violation(s) of NSPS, MACT, and Title V requirements of the CAA, including:

- Issue an administrative penalty order in accordance with CAA Section 113(d);
- Issue an order requiring compliance with such requirement or prohibition;

- bring a civil action in accordance with CAA Section 113(b) or 305; or
- request the Attorney General to commence a criminal action in accordance with CAA 113(c).

The amount of civil penalties that may be recovered for violations of the CAA and its implementing regulations is set by statute at not more than \$25,000 per day per violation, but has been adjusted pursuant to the Debt Collection Improvement Act, 31 U.S.C. 3701 *et seq.*, to up to \$27,500 per day for each violation that occurs from January 30, 1997 through March 15, 2004, up to \$32,500 per day for each violation that occurs after March 15, 2004 through January 12, 2009, and up to \$37,500 per day for each violation that occurs after January 12, 2009. *See* 40 CFR Part 19.

Furthermore, for any person who knowingly violates any requirement or prohibition of an applicable SIP for more than thirty (30) days after the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 CFR Part 15), and Executive Order 11,738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

Penalty Assessment Criteria

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.

Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

Opportunity for a Conference

Respondent may request a conference with EPA concerning the violations alleged in this NOV. This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violation, and any efforts it may have taken or it proposes to take to achieve compliance. Respondent's request for a conference must be confirmed in writing within ten (10) days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made by email to froikin.sara@epa.gov or in writing to:

Sara Froikin, Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 2
Office of Regional Counsel – Air Branch
290 Broadway – 16th Floor
New York, NY 10007-1866

Notwithstanding this NOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

Issued: July 6, 2016

For Kathleen Mahoney-Bogusky

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

To: Phillips 66 Company
Attn: Doug Lafayette
1400 Park Ave
Linden, New Jersey 07036

cc: Vanessa Day
Northern Region Field Office
New Jersey Department of Environmental Protection

Richelle Wormley, Director
Division of Air Enforcement
New Jersey Department of Environmental Protection

Enclosure 2

CAA § 113

§ 7413.

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

- (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

- (A) issuing an order requiring such person to comply with such requirement or prohibition,

- (B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

- (C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

- (A) issue an administrative penalty order in accordance with subsection (d) of this section,
- (B) issue an order requiring such person to comply with such requirement or prohibition,
- (C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or
- (D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a permit or condition for any permit, applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

- (A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; ⁽¹⁾
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

- (1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced
 - (A) during any period of federally assumed enforcement, or
 - (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such

person has violated, or is in violation of, such requirement or prohibition.

- (2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

- (3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

- (1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to

preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

- (A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);
- (B) fails to notify or report as required under this chapter; or
- (C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter^[2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

- (3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or

both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

- (4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

- (A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

- (B) In determining whether a defendant who is an individual knew that the violation

placed another person in imminent danger of death or serious bodily injury—

- (i) the defendant is responsible only for actual awareness or actual belief possessed; and
- (ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

- (C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

- (i) an occupation, a business, or a profession; or
- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

- (D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

- (E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

- (F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- (6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

- (1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

- (A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

- (i) during any period of federally assumed enforcement, or

- (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

- (B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV-A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

- (C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.

Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as

prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of

this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

- (1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.
- (2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,^[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a

corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ON July 6, 2016, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY CERTIFIED MAIL-RETURN RECEIPT REQUESTED, ARTICLE NUMBERS 7015-0640-0001-0675-5449 POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Mr. Doug Lafayette
Phillips 66 Company
1400 Park Avenue
Linden, New Jersey 07036**


Geraldo Villaran

